IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 2670 OF 2006

S.P. SINHA & ORS. .. PETITIONERS

Versus

THE STATE OF MAHARASHTRA & ORS.. RESPONDENTS

Mr. Anirudh Joshi, R.R. Prasad, R.K.Pandey & Sanjiv Punalekar i/b PRS Legal for petitioners

Mrs. Revati Mohite-Dere for R-2 & 3

Ms. M.M. Deshmukh, APP

CORAM:-SMT. RANJANA DESAI, J.

DATED:- 11/12/06

P.C.:

. The petitioners who are ex-Chairman and Managing Director and Ex-Vice Chairman respectively, of M/s. Jenson and Nicholson (I) Ltd., respectively are aggrieved by the order dated 10/8/05 passed by the Small Causes Court at Mumbai and order dated 17/11/06 passed by the Additional Sessions Judge, Mumbai, rejecting the revision application filed by the petitioners against the order dated 10/8/05.

2. It appears that the petitioners filed an

application for permanent exemption on the ground that they are residing at Patna and Calcutta and are unable to attend the court as they reside at such distance. The learned Judge referred to the judgment of the Supreme Court in **M/s. Bhaskar Industries Ltd. v. M/s. Bhiwani Denim & Apparels Ltd. & Ors, AIR 2001 SC 3625** and the judgment of this court in **Bhaskar Sen v. State of Maharashtra & Ors. 2004 (4) MLJ 1115**. The learned Judge however, held that the presence of the accused is necessary to verify the undertakings of the accused and for recording of plea, if necessary. He, therefore, directed the accused to appear in the court for verification of the undertaking and recording of plea. The Sessions Court confirmed this order and hence this writ petition.

3. I have heard the learned counsel for the petitioner. He drew my attention to the judgment of the Supreme Court in **M/s. Bhaskar Industries Ltd.'s case (supra)**. He pointed out that the Supreme Court has clarified in this judgment that "the magistrate is empowered to record the plea of the accused even when his counsel makes such plea on behalf of the accused in a case where the personal appearance of the accused is dispensed

with". The relevant paragraph on which the reliance is placed by the learned counsel may be quoted.

> "Thus, in appropriate cases the magistrate can allow an accused to make even the first appearance through a counsel. The magistrate is empowered to record the plea of the accused even when his counsel makes such plea on behalf of the accused in a case where the personal appearance of the accused is dispensed with. Section 317 of the Code has to be viewed in the above perspective as it empowers the court to dispense with the personal attendance of the accused (provided he is represented by a counsel in that case) even for proceeding with the further steps in the case. However, one precaution which the court should take in such a situation is that the said benefit need be granted only to an accused who gives an undertaking to the satisfaction of the court that he would not dispute his identity as the particular accused in the case, and that

> a counsel on his behalf would be present in court and that he has no objection in taking evidence in his absence. This precaution is necessary for the further progress of the proceedings including examination of the witnesses".

4. The learned counsel states that similar principles are reiterated by this court in **Bhaskar Sen's case (supra)** and he submitted that this court has even observed that "even the statement of the accused under Section 313 of the Code of Criminal Procedure could be dispensed with, if he requests and gives an undertaking to the effect that he would not raise any question of prejudice, if any caused to him due to non-examination under Section 313 at any subsequent stage of trial, appeal or revision".

5. The learned counsel submitted that, therefore, the trial court erred in directing that the accused should remain present for verification of their undertaking and for recording plea.

6. I have also heard Mrs. Dere, learned counsel appearing for respondents 2 and 3. She submitted

that the respondents have no objection, if the petitioners are exempted, if they give an undertaking as set out in the Supreme Court's judgment in **M/s. Bhaskar Industries Ltd.'s case (supra)** and this court's judgment in **Bhaskar Sen's case (supra)**.

7. In the light of the above judgments, in my opinion, the petitioners can be exempted from appearing in the trial court, if they give the necessary undertakings in tune with the above judgments. Hence impugned orders are set aside. The petitioners are exempted from appearing in the trial court on the condition that the petitioners' give an undertaking to the trial court through their counsel that they would not dispute their identity as particular accused in the case and that a counsel on their behalf would be present in the court and that they have no objection in taking evidence in their absence. The petitioners would also be exempted at the time of recording their plea and at the time of recording their statement under Section 313 of the Code of Criminal Procedure on the condition that they give an undertaking that they would not raise any question of prejudice being caused to them due to non-examination under

Section 313 of the Code of Criminal Procedure at any subsequent stage of trial, appeal or revision. The petitioners to file their undertakings within 10 days.

. The petition is disposed of in the aforestated terms.

JUDGE.